

THE ZONING BOARD OF APPEALS  
TOWN OF LAMOINE  
606 Douglas Highway, Lamoine, ME 04605

NOTICE OF DECISION OF THE ZONING BOARD OF APPEALS

APPELLANTS: Harold MacQuinn, Inc.  
Attorney: Edmond J. Bearor, Esq., Rudman Winchell

LOCATION: Kittredge Gravel Pit, off Shore Road, Lamoine  
Map 3 Lot 33  
Map 3 Lot 31

OWNER: Harold MacQuinn, Inc.

APPEAL: Appealing the December 11, 2017, decision of the Lamoine Planning Board to deny Appellant's application for a permit under the Town's Site Plan Review Ordinance

APPELLEE: Town of Lamoine, Planning Board  
Attorney: Daniel Pileggi, Esq.

PARTIES OF INTEREST/OPPONENTS:

Attorney: (i) Friends of Lamoine  
John Steed, Esq.

Agent (ii) Cold Spring Water Co.  
John Holt

Agent (ii) Tweedie Trust  
Catherine de Tuede

Background

The Planning Board held a final public meeting on December 11, 2017, on the Appellant's application under the Town's Site Plan Review Ordinance to expand a gravel pit (the version in effect on September, 2012, which was the date the Appellant first sought approval to expand the existing gravel pit operation known as the Kitteridge Pit).

The Town's Site Plan Review Ordinance under Section J "General Review Standards," requires the approval of an application unless the proposal does not meet the intent of one or more listed criteria under that section, provided that the listed criteria were not first waived by the board. The Planning Board found that the Applicant failed to meet the criteria set out in

Sections J.1 “Preserve and Enhance the Landscape”; J.10 “Groundwater Protection”; and J.17 “Stormwater Drainage.” The Planning Board also found that the Applicant failed to meet Section K.3 “Special Review Standards for Mineral Exploration and Extraction,” because not all of the applicable standards of the Lamoine Gravel Ordinance had been met. The Planning Board therefore denied the application.

The Appellant filed a timely appeal of that decision with the Town Board of Appeals, which undertook review (pursuant to Section M “Appeals”, of the Site Plan Review Ordinance) at its public meetings/hearings held in conjunction with a companion appeal under the Gravel Ordinance, on February 12, 2018, March 26, 2018, and March 28, 2018, May 8, and May 9, 2018. Section M.1.b gives the Board of Appeals authority to decide appeals involving administrative procedures or interpretation of the Ordinance. If errors in interpretation are found, Section M.1.d gives the Board of Appeals authority to modify the interpretation or reverse the order of the Planning Board.

#### Findings and Conclusions

[A] By motion unanimously approved, the Board of Appeals concludes that the Planning Board misinterpreted the Site Plan Review Ordinance in its application of Section J Review Criteria J.1; J.10; and J.17, to the proposed development under review (gravel extraction).

#### Section J.1. Preserve and Enhance the Landscape:

The Board finds that the Planning Board erred in its interpretation and application of the Section J.1 to a gravel extraction proposal. By its nature, gravel extraction requires removal of vegetation and soil, and is an allowed use. Mineral extraction is specifically addressed under Section K.3 “Special Review Standards,” which also require an applicant to meet the standards in the Gravel Extraction Ordinance. These review standards speak to the requirements of screening and the removal of top soil, sand and gravel as well as groundwater. Thus, it is clear that the intent of the Ordinance is to allow for mineral extraction if the applicant satisfies the relevant review criteria. By its nature, it is impossible for gravel extraction to preserve and enhance the landscape, and thus applying the Section J.1 review criterion would result in a denial of gravel extraction every time, which is contrary to the intent of the Ordinance, and creates an illogical result. The intent of Section J.1 is to maintain the landscape and environmentally



sensitive areas during and after “construction,” which is not defined in the Ordinance. The word “constructed” is defined in the Ordinance as physical operations required for construction, including excavation, drainage and the like as part of that construction. The plain meaning of construction is the building of something. Gravel extraction is not construction. Thus, the Board concludes that the interpretation of Section J.1 criterion is that it does not apply to gravel extraction.

Section J.10. Groundwater Protection.

The Board finds that the Planning Board erred in its interpretation and application of the Section J.10 to the gravel extraction proposal. This criterion sets standards for projects that will have a common on-site water supply or sewage disposal system, which the proposal under review does not have. The Site Plan Review Ordinance addresses groundwater extensively under the criteria for mineral extraction in Section K.3, which incorporates the requirements under the Gravel Extraction Ordinance. Thus, the Board concludes that the interpretation of Section J.10 criterion is that it only applies to proposals that do have a common on-site water supply or sewage disposal system.

Section J. 17. Stormwater Drainage.

The Board finds that the Planning Board erred in its interpretation and application of Section J.17 to the gravel extraction proposal. This criterion speaks to the effects of storm water drainage on groundwater, and not the effects of the proposal in general to groundwater, which is the way the Planning Board incorrectly interpreted it — as stated in the preceding paragraph — given that it is covered elsewhere in the Ordinance under Section K.3.

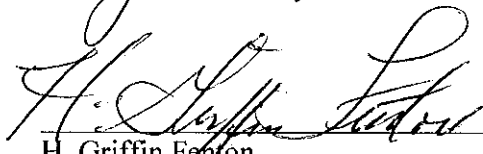
[B] Section K.3. By motion unanimously approved, the Board of Appeals concludes that due to the decision of this Board on the Applicant’s companion Appeal under the Lamoine Gravel Ordinance, the Planning Board’s decision under Section K.3 of the Site Plan Review Ordinance now results in a procedural error. Therefore, the Planning Board now must continue its review under Section K.3 of the Site Plan Review Ordinance.

Decision

Based on the above findings and conclusions, the Appeal of the Planning Board's December 11, 2017, decision denying the Appellant's application under the Site Plan Review Ordinance to expand the Kitteridge gravel pit is GRANTED.

This matter is remanded to the Planning Board to take further action consistent with this decision.

Date: June 22, 2018

  
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H. Griffin Fenton  
Town of Lamoine Board of Appeals Chairperson